IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2002

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THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 14182 of 1995
and
W.M.P. No. 27512 of 2000

R. Chinnadurai Padayachi ... Petitioner

-Vs-

1. R. Kasinathan
2. L. Chinnappa Padayachi
3. C. Thangarasu Padayachi

4. The Additional Records Officer
& the Additional Tahsildar
Kumbakonam Taluk
Thanjavur District

5. The Special Deputy Collector
Revenue Court (Special Deputy Collector)
Kumbakonam Taluk
Thanjavur District

6. The District Revenue Officer
Thanjavur District
Thanjavur ... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. T.P. Kathiravan

For Respondent : Mr. T. Susindran for R1
Mr. M. Mahalingam, Government
Advocate for R4 to R6
No appearance for R2 and R3

:ORDER

The petitioner has filed the above petition seeking for a Writ of Certiorarified Mandamus to call for the records from the 4th respondent's

proceedings in R.T.R. No. 112 of 1983 dated 31-08-1983 and subsequent proceedings in R.T.R. No. 34/91, dated 28-06-1993 and 5th respondent's proceedings in R.T.R. Appeal P. No. 6/93 dated 19-01-1994 and 6th respondent's proceedings in R.T.R.R.P. No. 4 of 1994, I-3 dated 2 4-10-1994 and quash the same and direct the 4th respondent to dispose of the matter on merits by giving opportunity to the petitioner to examine the petitioner's witnesses in conformity with the principles of natural justice.

2. Heard both sides. The petitioner and 3rd respondent herein have entered into a sale agreement in respect of agricultural lands measuring 10 cents in RS No. 35/2 out of 31 cents at No.88, Kothangudi Thattimal Village on 04-06-1984 for a sum of Rs.3,625/-. The 3rd respondent, though received a sum of Rs.1,000/- as advance under the said agreement failed to execute the sale deed, with the result the petitioner filed suit in O.S. No. 6 of 1985 for specific performance of the contract and the said suit was also decreed by the trial court. The trial court itself executed a sale deed dated 06-03-1991 which was registered as document No.121 of 1991 with Sub-registrar, Swamimalai. The petitioner has filed E.P. No. 98 of 1991 for recovery of possession and possession was also handed over on 13-04-1991 in the presence of Village Administrative Officer and others. Thereafter, the 1st respondent allegedly interfered with the possession of the plaintiff, hence a complaint dated 02-05-1991 was filed by him with the local police. The 1st respondent has also filed another suit in O.S. No. 5 of 1991 to restrain the petitioner from interfering into his possession on the ground that he is a cultivating tenant under the 3rd respondent herein. It is also alleged by the 1st respondent that the 2nd respondent has executed a tenancy agreement dated 23-06-1983, which agreement was also recorded by the 4th respondent in R.T.R. No. 112 of 198 3 dated 30-01-1983. The petitioner has also filed an application before the 4th respondent in T.R.R.P. No. 34 of 1991 to cancel the earlier proceedings against the 1st respondent. The petitioner herein has canvassed before the 4th respondent that the property originally belonged to one Lakshmana Padayachi, later under a partition deed dated 29-06-1993 the same was allotted to the 2nd respondent herein. Subsequently, the said property was partitioned between the 2nd respondent with his two sons namely Rajaram and Thangaraj, 3rd respondent herein and allotted 10 cents each. The 2nd respondent sold his share in Survey No.35/2 along with another son measuring about 20 cents to the 1st respondent's wife. The portion allotted to the 3rd respondent to the extent of 10 cents was purchased in the manner mentioned above and sale deed executed by the court and possession also delivered to him. According to the petitioner, the respondents 1 to 4 colluded with each other with the result R.T.R. No. 112 of 1993 was ordered against him. The petitioner came to know the R.T.R. Proceedings only after receipt of the pleadings in O.S. No.5 of 1991. It is also the case of the petitioner that "adangal" in the fasli 1393 and 1395 do not contain the name of 1st respondent as cultivating tenant. The 4th respondent has passed the impugned order dated 28-06-1993 in R.T.R. No. 112 of 1983 rejecting the petitioner's contention. The 2nd and 3rd respondents do not oppose the petitioner's contention.

3. According to the petitioner, the 5th respondent/first appellate authority mechanically confirmed the findings of the 4th respondent

and dismissed the appeal on 19-01-1994. The 5th respondent also failed to consider the decree passed in O.S. No. 6 of 1985 and order passed in E.P. No. 98 of 1991 in O.S. No. 6 of 1985 dated 13-04-1991 thereby the possession was delivered to the petitioner. Against the order of the 5th respondent, the petitioner herein has filed a revision petition under Section 7 of the Act before the 6th respondent in R.T.R.R.P. No. 4 of 1994 and the 6th respondent also dismissed the revision.

4. The learned counsel appearing for the first respondent submitted that nevertheless change of ownership the fact remains that the 1st respondent herein is a cultivating tenant which was duly registered as per the Act by the 4th respondent which was also confirmed by the 5 th and 6th respondents, hence prayed for dismissal of the writ petition.

5. Admittedly, in this case, the record of tenancy was registered in the name of the first respondent herein as early as 1983. The petitioner herein has become owner of the property consequent to the sale deed executed by the Civil Court on 06-03-1991. It is also not disputed by the respondents that possession was delivered as per the order passed in the execution petition on 13-04-1991. The authorities, after taking into account of kist receipts, land rent receipts, records produced by the 1st respondent to show that he is a small farmer found that 1st respondent is a cultivating tenant. It is also rightly pointed out by the authorities that the 1st respondent was in possession of the property as a cultivating tenant even prior to the sale agreement dated 04-06-1984 entered into between the petitioner and the 3 rd respondent herein. Though ownership has been changed in the name of the petitioner, the land has been under the cultivation of the 1 st respondent ever since 1983, the date in which his name was registered as cultivating tenant i.e., 31-08-1983.

6. As rightly pointed out by the authorities, change of ownership cannot affect registration of land records of tenancy rights in favour of the 1st respondent. Moreover, no documents were produced by the petitioner before the authorities to show that he has cultivated the lands. No details furnished by both sides in respect of suit in O.S. No. 5 of 1991 filed by the 1st respondent herein against the petitioner. However, the petitioner has produced a xerox copy of the judgment in O.S. No. 370 of 1991 dated 29-10-1999 passed by the Additional District Munsif, Kumbakonam and submitted that the said court dismissed the suit for injunction filed by the 1st respondent in respect of the very same land, which is the subject matter of this writ petition, which is not disputed by the respondents 1 to 3. Admittedly, the said suit was decreed long after the order dated 24-10-1994 passed by the 6th respondent herein. Subsequent events, if any alter the rights of the parties, it is always open to them to approach the authorities to seek their remedy. The orders passed by the authorities are based on valid evidence and on independent consideration. Hence, no interference is warranted.

With the above observation, the writ petition is dismissed. NO costs. Connected WMP is also closed.

27-08-2002
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Index : Yes
Internet : Yes

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